



POLICE DEPARTMENT

The
City
of
New York

In the Matter of the Disciplinary Proceedings

-x-

- against - : FINAL

Police Officer Andy Scantlebury : ORDER

Tax Registry No. 937500 : OF

Housing PSA 9 : DISMISSAL

-x-

Police Officer Andy Scantlebury, Tax Registry No. 937500, Shield No. 3699,
Social Security No. ending in [REDACTED], having been served with written notice, has been
tried on written Charges and Specifications numbered 2013-10130 and 2012-8560 as set
forth on form P.D. 468-121, dated July 22, 2013, June 13, 2016 and November 20, 2012,
and after a review of the entire record, has been found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the
Administrative Code of the City of New York, I hereby DISMISS Police Officer Andy
Scantlebury from the Police Service of the City of New York.

A handwritten signature in black ink that appears to read "James P. O'Neill".
JAMES P. O'NEILL
POLICE COMMISSIONER

EFFECTIVE: June 9, 2017

COURTESY • PROFESSIONALISM • RESPECT



POLICE DEPARTMENT

March 17, 2017

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In the Matter of the Charges and Specifications	:	Case Nos.
- against -	:	2013-10130 & 2012-8560
Police Officer Andy Scantlebury	:	
Tax Registry No. 937500	:	
Housing PSA 9	:	
At:		
		Police Headquarters
		One Police Plaza
		New York, New York 10038
Before:		Honorable Paul M. Gamble
		Assistant Deputy Commissioner Trials
<u>APPEARANCE:</u>		
For the Department:		Beth Douglas, Esq. Department Advocate's Office One Police Plaza New York, NY 10038
For the Respondent:		Jaye Ballard, Esq. Jaye Ballard & Associates, PLLC 30 Wall Street, 8 th Floor New York, NY 10005
To:		

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HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

Disciplinary Case No. 2013-10130

1. Said Police Officer Andy Scantlebury, assigned to the Quartermaster Section, on or about July 19, 2013, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer damaged a computer belonging to Person A. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT -
GENERAL REGULATIONS

2. Said Police Officer Andy Scantlebury, assigned to the Quartermaster Section, on or about July 21, 2013, at a location in the confines of [REDACTED] County, intentionally placed or attempted to place another person in fear of death, imminent serious physical injury or physical injury, to wit: said Police Officer followed Person A into a bathroom and locked the bathroom door, threatened Person A with physical harm, then as Person A ran out of the house, said Police Officer followed her down the street and continued to threaten her with physical harm, causing Person A to be in fear of physical injury. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT -
GENERAL REGULATIONS

NYS PENAL LAW SECTION 120.15 - MENACING IN THE THIRD
DEGREE

Disciplinary Case No. 2012-8560

1. Said Police Officer Andy Scantlebury, assigned to the 79th Precinct, while off-duty, on or about November 17, 2012, through November 18, 2012, within the confines of Atlantic City, New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer was involved in a physical altercation with Person A.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

2. Said Police Officer Andy Scantlebury, assigned to the 79th Precinct, while off-duty, on or about November 17, 2012 through November 18, 2012, within the confines of Atlantic City, New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer grabbed the cell phone of Person A and broke it into pieces.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

3. Said Police Officer Andy Scantlebury, assigned to the 79th Precinct, while off-duty, on or about November 17, 2012, through November 18, 2012, within the confines of Atlantic City, New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer threatened Person A while placing a firearm to her head.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

4. Said Police Officer Andy Scantlebury, assigned to the 79th Precinct, while off-duty, on or about November 17, 2012, through November 18, 2012, within the confines of Atlantic City, New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer forcibly kept Person A from leaving the hotel room.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

5. Said Police Officer Andy Scantlebury, assigned to the 79th Precinct, while off-duty, on or about November 17, 2012, through November 18, 2012, within the confines of Atlantic City, New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer failed to carry his issued Department shield while armed with his firearm.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 15, December 14, 16 and 20, 2016. Respondent, through his counsel, entered pleas of Not Guilty to the subject charges. The Department Advocate's Office called Person A and Sergeant Sally Spinosa as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the undisputed facts in this case. It is undisputed that on November 17, 2012, Person A and Respondent took a trip to Atlantic City to see a boxing match (T. 44, 282-283, 361, 408-409). At the time of the trip, Person A and Respondent were in a romantic relationship, which began in 2009 (T. 39, 453). They rented a room in the Trump Hotel, with a view toward staying overnight (T. 75-76, 282-

283, 361, 415, 477). After arriving in Atlantic City at approximately 1200 hours, Respondent and Person A went to a movie, then had a late lunch at approximately 1800 hours (T. 45). Respondent imbibed two Long Island Iced Tea cocktails¹ during lunch (T. 45, 47). Respondent left his firearm in the safe lock box located in their hotel room; however, he did not bring his shield with him on the trip (T. 74, 287-291, 308, 315, 389-390, 412-413, 491-492).

When Respondent and Person A arrived at the boxing venue at approximately 1930 hours, he discovered that some of his favorite boxers and commentators were present (T. 46-47, 409-410, 469-470). Respondent asked Person A to take pictures of him with various boxers during and after the match (T. 48, 283-285, 409-410). After taking a picture of Respondent and Roy Jones, Jr., Person A asked Respondent, "Why are you so excited?" in the presence of others (T. 48, 284-285, 410, 469-470). During the boxing match, Respondent imbibed two large beers (T. 47). The match concluded at approximately 2300 hours (T. 46, 283).

At about 0050 hours on November 18, 2012, Person A and Respondent returned to the Trump Hotel, which was a short distance from the boxing venue (T. 49, 410, 470). Upon their arrival, Respondent and Person A posed for pictures together in the hotel lobby, assisted by a member of the hotel staff (T. 49, 286, 410, 470-471). Approximately ten minutes later, Respondent and Person A took the elevator to their room on the twenty-sixth floor (T. 49, 313-314, 410-411, 471).

Once Respondent and Person A reached their room at approximately 0100 hours, they began to disrobe and prepare for bed (T. 50, 287, 411). Shortly after that,

¹ A Long Island Iced Tea is a cocktail made from .75 oz. of gin; .75 oz. of white rum; .75 oz. silver tequila; .75 oz. Triple Sec; .75 oz. vodka; .75 oz. simple syrup; .75 oz. lemon juice; and cola.

Respondent asked Person A why she had said that he was excited (T. 50, 287, 288-289, 292, 411). A physical and verbal altercation ensued between Respondent and Person A, the circumstances of which are in dispute (T. 50-67, 73-75, 292-306, 411- 412, 473-476). The parties agree that Respondent injured his hand during the altercation (T. 64, 4 72-473). Somewhere in the period from 0300-0400 hours, Respondent and Person A left the hotel room with their belongings and went downstairs to check out (T. 74-75, 314- 315, 413-416, 476-477).

After Respondent had settled the room charges, he went outside to retrieve his vehicle from the valet (T. 75-76, 415-417). Once Respondent was outside, Person A notified the front desk clerk, and eventually officers from the Atlantic City Police Department, that Respondent had assaulted her and pointed a firearm at her head in their room; Respondent was [REDACTED] driven to the Atlantic City Police Station (T. 78-82, 324-331, 416-418). Later that day, Respondent filed a police report claiming Person A had assaulted him [REDACTED]

[REDACTED] T. 108,149-150, 369-370, 419-420). Person A did not seek an order of protection against Respondent when she was in Atlantic City (T. 153). As a result [REDACTED]
[REDACTED] Respondent was suspended (T. 389-390, 404-405).

On July 21, 2013, Person A entered Respondent's residence (T. 119, 120, 425). The manner in which Person A entered the residence, as well as the facts concerning the interaction between Respondent and Person A inside the residence, are in dispute. Person A left the residence and called the [REDACTED] Police Department, which responded to Respondent's home (T. 124-126, 430). Police Officers Connelly and Mulhern conducted a brief investigation at the scene, [REDACTED]

[REDACTED]

[REDACTED] Respondent was suspended again [REDACTED] (T. 440).

The following is a summary of the disputed facts of these cases.

1 Person A

Person A testified that at the boxing match, Respondent seemed excited (T. 46-47). During the fight, he asked her to walk around the venue and take pictures of him with his favorite boxers; Person A stated that she took about twenty photographs for Respondent that evening (T. 48). When the fight ended, Respondent asked her to take a final photo, which she did (T. 48). Person A expressed her desire to leave, confessing that she was tired from the long day (T. 48, 284-285). She told Respondent that she had taken enough photos and asked him, "Why are you so excited?" (T. 48, 284-285).

On the short walk from the boxing venue to the Trump Hotel, Respondent asked Person A why she said he was "so excited"; Person A did not respond (T. 49). Once in their room, Respondent asked Person A again why she said he was "so excited" at the venue (T. 50, 287-289). She responded, "Why don't you stop acting like an EDP?" (T. 50, 288-289). Person A testified that "EDP" was police jargon for "Emotionally Disturbed Person" (T. 50).

Upon hearing Person A's response, Respondent jumped out of bed, chased her to the bathroom, and began slapping and punching her there (T. 50, 52, 292). Specifically, Respondent slapped the right side of her face and punched her with a closed fist in the upper triceps of her left and right arms, chest, and abdomen (T. 50, 52-53). Respondent

then followed Person A from the bathroom back into the hotel room, where he "slammed" her to the floor (T. 50, 52). Respondent then ripped off her clothing, consisting of a red Bally's T-shirt and black Victoria Secret underwear, causing a laceration on her right buttock (T. 50-53, 300, 306; Department Exhibits 2 and 3). Person A is 5'3" tall and weighed approximately 130 pounds at that time (T. 56-57); Respondent is 6'2" tall and weighed approximately 220 pounds at that time (T. 56-57, 452).

After ten to fifteen minutes of intermittent physical assaults, Person A crawled back into the bathroom and dressed in new underwear, sweat pants, and a sweat top (T. 50-53, 300-303, 305-306). Once dressed, she began gathering her belongings from around the room to prepare to leave (T. 53-54, 302). At some point, after Person A was dressed, she picked up her Blackberry cellphone to call her cousin to pick her up from Atlantic City (T. 60, 63-65, 303). Respondent took the phone from her hand and bent it in half, breaking it (T. 63-65, 90-91, 303; Department Exhibits 4-A and 4-B). Respondent injured one of his hands when he broke the phone and was bleeding from his palm (T. 63-65 107). After Respondent had broken her cell phone, Person A tried to use the hotel room's phone (T. 66, 310-311). Respondent pulled the phone jack out of the wall (T. 66, 310-311). Person A stated that the hotel phone was damaged and she could not make any other calls (T. 66, 310-311).

Thereafter, Respondent grabbed Person A and commenced a series of physical assaults over a period of approximately two to three hours, which included the following: "slamming" her; punching her with a closed fist; slapping her; and "throwing" her around the room, particularly from the bed to the floor (T. 53-55, 306-307). During this

altercation in the room, a lamp and a drinking glass were knocked over (T. 309-310). Person A stated that during the assault, her knees were bruised and strands of her hair were pulled out (T. 54-55). Throughout the altercation, Respondent told her to "Shut the F up," "Shut your mouth," and stated, "I'm not going to jail . . . I might as well finish you off right now" (T. 55). At one point, while Person A was on the floor, Respondent used both hands to "squeeze her throat" and choke her for a couple of seconds (T. 55-56).

Person A testified that while she lay on the floor crying, Respondent got dressed, retrieved his firearm from the hotel's safe and placed it in his waistband (T. 57, 308). Person A attempted to run out of the hotel room several times, but Respondent stopped her each time (T. 56, 308). At one point, Respondent grabbed Person A by her coat, threw her face down on the floor, and sat on her back (T. 56-57). Respondent then put his firearm to the back of her head (T. 56-57, 308). Person A testified that she was fearful Respondent would kill her, stating, "I was crying and pleading for my life, begging him not to kill me, as I called out my daughter's name" (T. 57, 198, 308). Respondent ordered her to "shut up" and told her that she was crazy (T. 58, 307-308).

Respondent eventually got off Person A, walked to the hotel door, and threatened to kill himself, placing his firearm at the side of his head (T. 58, 307-308). Person A responded, "Please don't kill yourself," and turned her back because she could not bear to watch (T. 58-59, 307-308). Respondent then removed his firearm and contemplated out loud how he was going to get out of this situation, saying, "I don't know what I should do with you. I don't know if I should kill you here in the hotel or I should walk you down at gun point or take you down as a hostage," and "I'm not going to jail" (T. 59, 73-74, 308-

309). After he made these statements, Respondent periodically looked through the peephole in the hotel door (T. 59-60).

Person A sat on her luggage near the door to see what Respondent would do next (T. 60, 73). Respondent tried to give Person A his firearm several times, but she refused to take it (T. 60, 73). Respondent then sat with his back against the door (T. 60). In total, there were about three "circuits" of Respondent slapping, punching, "slamming and throwing" her around the room, pulling her hair, and choking her (T. 60-62, 293-295, 312-313). These assaults occurred approximately every ten to fifteen minutes (T. 60-62, 293-295, 312-313). Person A testified that throughout these assaults, she cried and pleaded with Respondent to let her leave; he responded by telling her to shut up and declared that he was "not going to jail" (T. 65-66).

Person A testified that after pacing around the room and after the assaults, Respondent grabbed his bags, told her to grab her bags, and stated, "Let's go" (T. 74, 315-316). Respondent walked out of the room with his gun in his waistband, and Person A followed (T. 74, 315-316). Person A stated that they did not encounter anyone in the hallway on the way to the elevator; however, once they were in the elevator, they saw another couple who spoke with Respondent (T. 75, 314-316).

Once in the lobby, Respondent proceeded to the front desk to pay his bill and request his vehicle from the valet (T. 75 -76); Person A stood a few feet behind him (T. 76). He then left the lobby and went to the valet area outside the hotel entrance (T. 75- 76). Person A remained at the front desk and asked the clerk to call 911, informing him that her boyfriend just assaulted her and pulled a gun on her in the hotel room (T. 76, 148, 323). The clerk called 911 and officers from the Atlantic City Police Department

arrived within a few minutes (T. 78-82). After Person A had informed the responding officers of what had transpired in the hotel room, Respondent was [REDACTED] transported to the Atlantic City Police Station (*Id.*). Person A was also brought to the station in a separate car (T. 78-82, 324-331, 416-418).

At the police station, a male officer took photographs of Person A's neck, knees, and face at around 0400 hours on November 18, 2012 (T. 83). Six of those photographs were entered into evidence at trial (Department Exhibits 1-6; T. 85-86, 320). Person A also took photographs of herself while she was in the police station bathroom (T. 320- 321).

At about 1630 hours on July 19, 2013, Person A and Respondent were at his home in [REDACTED] New York when he started a verbal disagreement with her, accusing her of failing to do enough to ameliorate the repercussions from the Atlantic City [REDACTED] T. 372-373). Since [REDACTED], Respondent had raised the issue with Person A on almost a daily basis, asking her to "tell them what happened never happened" (T. 115). Respondent asked Person A when she was going to "do that for him" and she responded that she never said she would (*Id.*). Respondent became enraged and picked up several glass coasters, throwing them in Person A's direction (T. 114, 180). Person A was seated at the dining room table working on a laptop; one of the coasters Respondent threw passed close to her head, and the other coaster struck the laptop, damaging the screen (Department Exhibits 8-A, 8-B; T. 183-184, 373).

During this altercation, Person A observed that Respondent had cut his hand (T. 115, 181-182). Respondent walked into the kitchen and rinsed the blood from his hand in

the sink, then left home, ostensibly to go to Home Depot for products to clean his blood from the floor (T. 115).

Once Respondent left home, Person A went to the [REDACTED] Police Department and spoke with a female police officer (T.115, 374-375). Person A reported that Respondent had damaged her laptop, explained the circumstances and disclosed that he was a New York City Police officer (*Id.*). Person A was advised that because of his status as a police officer, Respondent would [REDACTED] and that she did not have to file a report immediately (T. 115,188). Person A admitted that at that time, she had no desire to see Respondent lose his job (T. 188-189). She left the [REDACTED] Police Department and returned to Respondent's home at about 2000 hours.

Upon her return, Person A observed Respondent cleaning up the damage from the items he had thrown (T.115). She packed a bag of clothing for herself and her daughter and then departed Respondent's home for her mother's home in [REDACTED] approximately 25 minutes later² (T. 196- 197). At the time of this incident, Person A's daughter was visiting Person A's mother (T. 3 77).

On July 21, 2013, at approximately 1200 hours, Person A returned to Respondent's residence to retrieve additional personal belongings (T. 119). She was unable to open the front door on her own and waited until Respondent opened it to enter the residence (*Id.*). Person A walked up the interior stairs, followed by Respondent and entered a bathroom (*Id.*). Respondent entered behind her, then closed and locked the bathroom door (T. 119-120). Respondent said, "What do you think; this is a f – king game?" then said, "I'm going to kill you" (T. 119, 189-190). Respondent balled his fist and brought it to her face as she crouched down by the side of the bathtub crying (T.

² Person A's daughter moved into Respondent's home with her in June 2013.

119). After pleading with Respondent to let her go, he unlocked the bathroom door and permitted Person A to exit the bathroom (T. 120). She proceeded down the stairs, retrieved her cell phone, put her shoes back on and ran from the residence (T. 120-121). As she left the residence, Respondent was pursuing her with a balled fist saying, "I'm going to kill you" (T. 121, 252-254, 255).

Person A turned right and continued running away from Respondent's residence until she realized that he had stopped pursuing her on foot and had entered his car (T. 121, 257). The street on which Respondent's residence sits is a two-way thoroughfare (T. 122). As she was running, Person A saw three of Respondent's neighbors, one from the house to his left and two across the street from his residence (*Id.*). Person A screamed for someone to "call 911" (T. 122-123). As Person A ran across the street to her car, Respondent drove his car toward her (T. 121, 257, 260, 261-262). Person A entered her car and called 911 as she sat inside (T. 123). Respondent had made a "U-turn" and positioned his car so that he and Person A were facing in opposite directions (T. 123). Person A described Respondent's car as being to her left (T. 257-258). As she was speaking to the 911 operator, Respondent was reaching out of his window pulling on the handle to her door (T. 124). Respondent's driver's window was down, while Person A's windows were up (*Id.*). Person A testified that Respondent eventually opened her door while she continued speaking to the 911 operator using the speaker function of her phone (T. 125). Respondent said, "I'm sorry," closed her door, made a "U-turn," and then drove to the end of the block (T. 125, 126).

As Person A heard police cars from the [REDACTED] Police Department drawing closer, she observed Respondent making a "U-turn" to park his car in front of his

residence (T. 127). Officers Mulhern and Connolly arrived at the location, and Officer Connolly spoke with Person A (T. 128). Person A informed Connolly of the circumstances leading up to Respondent damaging her laptop and showed him the damaged instrument (*Id.*). Connolly told Person A to wait, and then entered Respondent's residence with Mulhern (*Id.*). After a short time, both officers emerged from Respondent's residence and then appeared to confer. Connolly returned to Person A and informed her that [REDACTED]

Respondent had alleged that she had stolen his credit cards and made unauthorized purchases (*Id.*). Person A and Respondent were [REDACTED] transported to the [REDACTED] Police Department [REDACTED] (*Id.*). [REDACTED]

At the [REDACTED] Police Department, Person A gave a statement to Connolly, which was incorporated into a Domestic Incident Report (T. 191, 232, 248-249, 353-355).

2. *Sergeant Sally Spinosa*

Sergeant Sally Spinosa, assigned to the Patrol, Borough Staten Island Investigative Unit, testified that she and her partner, Lieutenant Malloy, were called to Atlantic City in the early morning hours of November 18, 2012, after Respondent [REDACTED] the Atlantic City Police Department (T. 389, 392-293). Sergeant Spinosa was ordered: (1) to inform Respondent that he was suspended [REDACTED] and (2) to retrieve his firearm, shield, and identification card from him (T. 389-390, 404-405). She

was unable to retrieve Respondent's shield since it was not in his possession; the shield was eventually recovered from his Department locker at the 79th Precinct (T. 389-390, 404-405).

Sergeant Spinosa was also ordered to conduct interviews with the Atlantic City Police Department and any victims or witnesses (T. 389-390, 392). Sergeant Spinosa recalled interviewing the [REDACTED] officer and Person A (T. 391-395). The [REDACTED] officer informed Sergeant Spinosa of Person A's assault allegations by Respondent in the hotel room (T. 395). Sergeant Spinosa testified that she also spoke directly with Person A about the incident (T. 395). Neither Sergeant Spinosa nor her partner went to the hotel where the alleged incident had taken place (T. 395, 400-401).

While Sergeant Spinosa did not recall speaking with the [REDACTED] officer about Person A's injuries, she recalled taking pictures of her in Atlantic City (T. 396). Specifically, Sergeant Spinosa testified that Person A had some scratches and bruising to her face and neck (T. 396-397, 403-404). While Sergeant Spinosa did not recall viewing Person A's uncovered arms or legs, Sergeant Spinosa did recall Person A stating that she had bruises on her legs (T. 403-404). Finally, Sergeant Spinosa testified that she assumed that she took pictures of Person A's entire body since she "has been doing this for a long time" and was consistent with her practice in domestic incidents (T. 398, 402).

3. *Respondent*

Respondent testified that on November 17, 2012, at approximately 1800 hours, he and Person A attended a boxing match in Atlantic City between Adrien Broner and Tony DeMarco (T. 409). Upon their arrival, Respondent realized that HBO was the

television provider and Roy Jones, Jr., who was his "boyhood idol" and "the Muhammad Ali of his time," would be providing the commentary for HBO (T. 409, 469). He informed Person A of this and, pursuant to his request, she took a picture of Respondent with Jones (T. 409).

When Respondent told Person A how happy he was that she had taken the picture, she put her hand directly in his face and started screaming at him that he was "too excited" in front of everyone present, including Jones (T. 410, 469-470). Respondent claimed to be confused by Person A's behavior and was "not embarrassed or angry by her actions, but surprised" (T. 410, 469-470). Respondent and Person A left the venue at approximately 0050 hours on November 18, 2012 (T. 410-411, 470)

At approximately 0100 hours, they arrived at their hotel room and began getting ready for bed (T. 471); Person A took a shower and packed her belongings, while Respondent changed into a tank top and boxer shorts (T. 411). Respondent testified that he was still confused about Person A's behavior at the boxing event, and calmly asked her, "What did I do that made you feel that I was too excited?" (T. 411). Person A screamed at Respondent, then Respondent screamed back at Person A then responded by screaming profanities at him, such as "f-ggot," "b-tch ass n-gger," and "EDP" (T. 411, 471).

Respondent conceded that a physical altercation ensued in the hotel room which lasted for approximately one hour with Person A continuing to scream at him (T. 414-415, 473). Person A charged at him with keys in her hands, while Respondent sat on a chair, and began pounding and punching him (T. 411, 471-472). In response to this assault, Respondent "simultaneously got up and pushed [her] off [me] to blunt the attack"

(T. 411-412). Person A dropped her keys and proceeded to punch, slap, and kick Respondent; Respondent again pushed her off of him (T. 412).

Person A then went into the bathroom, closed the door, and began throwing toiletries and other items (T. 412, 414-415). Respondent did not recall exactly how long she was in the bathroom (T. 473-474). Person A eventually left the bathroom and began ripping clothes from the hangers in the closet (T. 412). Respondent told Person A their relationship was over and that he would be leaving without her (T. 412, 473-474).

Respondent did not recall seeing Person A's cell phone after the fight or before leaving the hotel room, nor did he recall Person A attempting to make any phone calls (T. 414-415). Respondent collected his belongings, retrieved his firearm from the safe, and exited the hotel room (T. 413). Respondent confirmed that retrieving his firearm was the last thing that he did before leaving the hotel room (T. 413).

Respondent asserted that Person A inflicted defensive wounds on his hands during the assault with her keys (T. 72, 472). He did not seek medical attention to treat the bleeding from his hand and did not report Person A's assault to any of the hotel staff (T. 472-473, 477-478). Despite the nature of the physical altercation, Respondent claimed the hotel room was in good condition; specifically, he asserted that it was "in the order they had received it with no damaged items, and the bed was made" (T. 414). Also, there was no damage to the bathroom, besides the toiletries thrown awry (T. 414-415).

Respondent left the hotel room first to wait for the elevator; Person A stepped out of the room shortly after that and joined him (T. 416). They took the elevator to the hotel lobby, where Respondent settled the room charges, then proceeded to retrieve his vehicle from the valet (T. 415-416, 476-477). Although they both went to the concierge,

Respondent stated that he did not recall any conversations between Person A and other individuals in the lobby (T. 416).

As Respondent waited for his vehicle, he noticed that officers from the Atlantic City Police Department had arrived at the hotel (T. 416-417). They walked past him, went inside the hotel, came back out, and asked what had happened between him and Person A (T. 416-417). Respondent replied that they had a dispute (T. 416-417). All but one of the officers went back inside the hotel, then returned to Respondent and informed him that Person A was making serious allegations (T. 417). Respondent then put his hands up and responded, "These are defensive injuries. I was defending myself" (T. 417).

Respondent was [REDACTED] driven back to the precinct (T. 417-418). Although he did not see where Person A was at that moment, Respondent was informed that she would also be brought back to the precinct and both would speak with detectives (T. 417). None of the responding officers questioned Respondent about what occurred in the hotel room, but he was told that he would be able to file a report about Person A's attack once he "went through the process" (T. 417-418). Respondent repeated his counter-claim later the same day, stating that Person A had attacked him and requesting that the police take pictures of his hands (T. 418).

Respondent testified that he had no recollection of either an argument with Person A on July 19, 2013, regarding the trip to Atlantic City or any circumstances leading up to her laptop being damaged (T. 424). At approximately 1530 hours on July 1^{9th}, he was leaving his residence when Person A asked him where he was going (T. 422). When Respondent answered that a friend was taking him to dinner for his birthday,

Person A called him "a b-tch-ass n-gger" and asserted that he should be taking her out (*Id.*). Respondent informed Person A that they were not in a relationship; that he needed her to leave his house immediately; and repay him the \$7,000 he had loaned her (*Id.*). Person A responded, "F-ck you, I'm not paying you the money" (*Id.*). Respondent testified that, in his view, their relationship had ended on June 28, 2013, when he had a process-server serve Person A with a Notice of Eviction (T. 423). Respondent left his residence, had dinner with his friend and returned at approximately 2000 hours (T. 425). Respondent did not recall Person A being present when he returned (*Id.*).

Respondent testified that on July 21, 2013, at approximately 1630 hours, he was at home when Person A entered through the front door, swinging it open with such force that it struck the closet door on the other side of the doorway (T. 426-426). Person A walked into the living room without speaking to Respondent, temporarily blocking his view of his television (T. 426). As Person A proceeded to ascend the staircase, Respondent informed her that he placed her belongings in the basement, so there was no need for her to go upstairs (*Id.*). Person A nevertheless went upstairs while cursing at Respondent (*Id.*). Respondent asked Person A to return his graduation pictures which she had removed without his permission; Person A answered, "F-ck you and your graduation pictures" (*Id.*). A few moments after Person A went upstairs, Respondent heard a loud crash and ran upstairs to find Person A in the bathroom standing over a box of toiletries on the floor (*Id.*). Respondent asked Person A why she used his credit card without his permission, to which she replied, "F-ck you and your credit card" (T. 426-427). Respondent testified that he began screaming at Person A, at which point she became more upset and declared that she was leaving (T. 427).

Person A descended the stairs while cursing at Respondent, then put on her shoes and left the residence, leaving the front door ajar (*Id.*). As Respondent was about to close the door, he observed Person A standing in front of his residence calling him, "b-tch-ass n-gger" and "f-ggot" (T. 427). Respondent closed the door and then went to his basement to retrieve his credit card statement (T. 428). After reviewing the statement, Respondent put on his shoes, got into his car and drove to the [REDACTED] Police Department with the intention of filing a police report concerning Person A's unauthorized use of his credit card (*Id.*).

Respondent testified that he reconsidered filing the report because he was concerned that this Department would just consider it another "domestic incident" (T. 428). In his estimation, the "49s" do not distinguish between perpetrator, witness, and victim; thus, reporting himself as the victim of Person A's fraudulent use of his credit card could still impact his employment status adversely (T. 428-429). Respondent testified that he already had two such incidents noted on his record involving his ex-wife, one where he made a complaint about her and another where she made a complaint about him (T. 429).

When Respondent left his residence, he could see Person A sitting in her car, parked across the street from his home (T. 430). He entered his car and left the area without speaking to her (T. 431). After deciding to forego the report to the [REDACTED] [REDACTED] police, he drove back to his residence to find [REDACTED] Police Officers Connelly and Mulhern standing in front of his home with Person A (T. 431). Respondent stepped out of his car, identified himself as a New York City police officer

and informed them that he and Person A had been involved in an argument because she had used his credit card without authorization (T. 430).

Officers Connelly and Mulhern asked to speak with him inside his residence (T. 431). Respondent and the two officers went inside, leaving Person A outside (*Id.*). Once inside, the officers informed Respondent that Person A had alleged that he had broken her laptop; Respondent denied the allegation (T. 432). Respondent was further informed that since it was a domestic incident and he and Person A had made accusations against each other [REDACTED] T. 433). Respondent was [REDACTED] led outside, where he saw Person A still waiting (*Id.*). Respondent [REDACTED] and then observed as Person A [REDACTED] (T. 433-434).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than the task of attempting to reconstruct the most probable nature of a past event on the basis of conflicting testimonial accounts. While the law creates the framework within which such a task is accomplished, the ultimate determination of which account to accept depends almost solely on an assessment of witness credibility. That assessment remains the exclusive province of the fact finder.

In making such an assessment, the trier of fact should consider a wide range of factors, including but not limited to, witness demeanor, corroborating evidence, the consistency of a witness account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and perhaps most basically the degree to which the witness accounts are logical and comport with common sense and general human experience.

In this case, untangling the truth from the record is particularly onerous because Respondent and Person A have a complicated relationship. First, at the time of each incident, Person A was financially dependent upon Respondent and could have considered the impact that reporting Respondent's conduct to law enforcement authorities would have on her financial standing. In May 2010, Person A was terminated by this Department after approximately two years of service. Respondent made two loans to Person A for legal fees associated with a wrongful termination action she brought against this Department, which she failed to repay. Respondent sought and obtained a civil judgment against her for one of those unpaid debts. From May 2010 to March 2012, while Person A lived with her mother in [REDACTED], Respondent gave her access to his lines of credit and provided \$400-500 per month in direct financial support. Once Person A moved into Respondent's home in March 2012, he bore the burden of paying household expenses; her contribution was limited to purchasing groceries.

Second, shortly after Respondent's arrest in Atlantic City, he filed a criminal complaint accusing Person A of assault. [REDACTED]
[REDACTED]

[REDACTED] Respondent and Person A continued to cohabit from the time he returned to his home after [REDACTED] Atlantic City until the July 2013 incident, which resulted in Respondent's [REDACTED]. Respondent again made allegations against Person A, accusing her of fraudulent use of his credit cards.

Third, Person A and Respondent are involved in a [REDACTED] Family Court case which was pending as of the date of this trial.

As an overlay to this dynamic is the particular complexity of assessing allegations of assaults by an intimate partner. The emotional complications of bringing such charges, however, must always be weighed against Respondent's due process right to have all evidence suggesting that the incident did not occur fairly evaluated and considered. It is within this context that I make the following findings of fact.

I find that Person A's testimony, under all of the relevant circumstances, was, for the most part, credible and reliable. Her demeanor on the witness stand was consistent with a desire to be forthcoming with the tribunal, even where she had to acknowledge a shortcoming in her recollection or inconsistency with prior testimony. In both cases, I find that Person A's prompt complaint to the proper authorities is a factor weighing in favor of her credibility. I find further that her testimony as it pertained to the Atlantic City incident was corroborated to a significant extent by independent physical evidence. In certain respects, I found her testimony was embellished but, even so, such characterization did not impact her credibility on the issue of whether Respondent struck her numerous times in the hotel room. Moreover, I find that her estimates of time, as they pertain to the altercation in the hotel room, are unreliable. I also find that Person A's testimony regarding her flight from Respondent's home on July 21, 2013, and his alleged pursuit of her in his vehicle to be confusing and somewhat implausible.

I find that there is insufficient evidence to conclude that the letter she signed at Respondent's request, which she was led to believe was intended to be sent to the Atlantic City authorities, was a recantation of her statements to the hotel desk clerk and the Atlantic City police. I credit her assertion that she never read the letter and relied upon Respondent's representations as to its contents. According to what Respondent told

her, she believed that the letter set forth the financial support he had provided her and asserted that he was a good person. I find further that Person A was under immense financial pressure to maintain her relationship with Respondent despite his abusive behavior, due to the loans she had yet to repay him and her dependence upon remaining in his favor to have continued shelter. I find further that the letter originated with Respondent, who created the document and strongly encouraged Person A to sign it.

I find that Person A's hesitation after she made her initial complaint to the [REDACTED] Police on July 19, 2013, was an understandable reaction to the gravity of her decision to press charges against Respondent rather than a factor negatively impacting her credibility. Person A was already aware that her complaint to Atlantic City Police on November 18, 2012, had resulted in Respondent's [REDACTED] suspension; the filing of Departmental charges against him which were unresolved as of the date of this incident. Since the time of the November 2012 incident, she had moved her daughter into the home she shared with Respondent, creating another person's interests she had to consider. Person A was informed that if she pressed charges, Respondent would be [REDACTED] Someone in Person A's situation could have recognized the decision to file a complaint as the death knell of the financial support and shelter he provided.

While Respondent was successful in highlighting several inconsistencies between Person A's testimony before this Tribunal and previous statements she had given, both out-of-court and under oath at trial, the inconsistencies were not on material issues in this case. Given the passage of almost four years since the events of which Person A testified, I do not find her inability to accurately recall certain portions of her previous statements to be particularly probative of her credibility.

I specifically reject Respondent's attempts to attack Person A's credibility by implying that her decision to continue a relationship with Respondent after the November 2012 incident, in which she testified she feared for her life, renders her testimony regarding allegations of assaultive behavior by Respondent incredible. This line of attack is an attempt to perpetuate the now-discredited myth that no reasonable person would remain in an abusive relationship beyond the first instance of abuse. Such a belief denies the complexity of such relationships and denies victims of abuse their agency; as such, this Tribunal will hold Person A accountable for decisions she made which have a potential to impact her credibility as it would any other witness.

I find Respondent's testimony to be unreliable and tailored to avoid responsibility for his misconduct. His testimony was evasive and disingenuous. It is beyond dispute that Respondent is an interested party in this proceeding and has a strong incentive to shade his testimony. When questioned by his counsel regarding numerous factual assertions made by the Department in their direct case, he asserted that he "did not recall" such events taking place. Respondent claims not to recall any incident with Person A occurring on July 19, 2013, essentially taking the position that she must have fabricated the incident because he claims not to have remembered it. In the view of this Tribunal, Respondent's repeated assertions that he did not recall certain events were evasive.

Respondent claimed that he was aware that a close friend of his accessed his Internal Affairs file without authorization but that he did not ask him to do so. This assertion is implausible and is another negative factor weighing against Respondent's credibility. In sum, Respondent has demonstrated through his sworn testimony that he is

willing to place his interests ahead of those of this Department, as well as the general public.

While "evidence of consciousness of guilt, such as flight, has limited probative value . . . its probative weight is highly dependent upon the facts of each particular case (*People v. Cintron*, 95 NY2d 329, 333 [2000]). In this case, Respondent's decision to check out of his hotel room after the disputed November 18, 2012, altercation, somewhere between 0300 hours and 0400 hours, is some circumstantial evidence that he was aware that his actions inside the hotel room were wrongful. Respondent repeatedly checked the peephole to observe the area outside his hotel room. He declared, at least twice, that he would not be going to jail. These behaviors are consistent with a guilty state of mind. Moreover, as a member of this Department, Respondent was aware that he was off-duty, out of his jurisdiction, carrying a firearm and had been drinking. Even allowing for some effect of the alcoholic beverages he imbibed upon his judgment, Respondent was likely cognizant that any official questioning by local law enforcement authorities would ineluctably be reported back to his command, not to mention his reporting requirements for off-duty incidents, providing a further incentive to return to New York without delay, despite the lateness of the hour.

Both Person A and Respondent testified to other acts of alleged uncharged misconduct committed by the other³. Based upon the entirety of the record, I find those

³ Person A alleged that in March 2012, Respondent shoved her into a toilet bowl, causing it to break in half; took her mobile phone from her hand and threw it to the floor as she was on the line with a 911 operator; then placed his firearm near her in what she perceived to be a threatening manner. While Person A reported the incident to the ██████████ police, no action was taken against Respondent. While I credit her testimony, the probative value of this evidence, if any, would be greatly outweighed by the danger of undue prejudice. In essence, it could appear to a neutral observer to be evidence of propensity, which would violate norms of fundamental fairness.

incidents to have little to no probative value and did not consider them in reaching my factual findings, as set forth below.

Case No. 2012-8560

Specification 1: Engaging in a Physical Altercation

I find by a preponderance of the credible, relevant evidence that Respondent initiated a physical altercation with Person A inside the hotel room in Atlantic City. Person A's first report of Respondent's acts inside their hotel room to the hotel desk clerk and, subsequently, to representatives of the Atlantic City Police Department, were made in close temporal proximity to the alleged misconduct and corroborated by independent physical evidence, thus supporting her veracity.

Respondent admitted that he persisted in questioning Person A about a comment she had made regarding his purported state of excitement. I find no evidentiary support for Respondent's claim that it was Person A who initiated the altercation and that he simply defended himself from her attack. It is more credible that Respondent started the altercation because he became embarrassed by Person A's lack of enthusiasm for taking pictures with boxers and her perceived criticism of his behavior. I further reject Respondent's argument that the tribunal should infer from the absence of serious physical injury to Person A that she fabricated the wrongful acts she attributed to Respondent. Respondent is not charged with assault, which ordinarily requires proof of a physical injury; he is charged with engaging in a physical altercation. That said, there is evidence

Respondent testified that in October 2012, Person A started an altercation with him because he failed to purchase a Gucci bag and sneakers for her. In addition, Person A was supposedly upset that Respondent returned a pair of earrings he had purchased for her because of a misperception as to their quality. According to Respondent, as he attempted to leave his home to escape the confrontation, Person A grabbed him by his shirt and punched him in his back. Respondent left his home and visited a friend. Assuming the truth of this testimony, I find that this evidence has no probative value with respect to the material issues before this Tribunal.

of physical injury which tends to corroborate Person A's testimony that she was struck several times in her face and extremities, in addition to having her underwear pulled from her body (Department Exhibits 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 2, 3).

Respondent's arguments inviting the Tribunal to engage in speculation as to his state of mind are unavailing. Respondent admitted in his testimony that he engaged in a physical altercation with Person A: whether he intended to strike Person A to render her incapacitated; to coerce her into a more deferential posture; or as a punishment for a perceived slight, the evidence supports a finding that he engaged in a physical altercation with her, which he initiated and which was not in response to any aggression she directed toward him.

Specification 2: Destruction of Cell Phone

I find by a preponderance of the credible, relevant evidence that during the altercation in the hotel room, Respondent grabbed Person A's mobile phone from her hand and broke it in two. Two photographs of the broken phone were admitted into evidence and corroborate Person A's testimony to that assertion (Department Exhibits 4-A, 4-B). Moreover, Respondent's admission that his hand was injured, despite his claim that the injury was incurred as a result of Person A lacerating his skin with a set of keys, tends to corroborate Person A's testimony further.

Specification 3: Threat Using Firearm

I find by a preponderance of the credible, relevant evidence that Respondent pointed his firearm at Person A's head and threatened to kill her. Despite Respondent's denial and a lack of independent corroboration for this factual assertion, I find Person A's testimony on this point credible. Respondent's act of threatening Person A

with violence immediately after a physical altercation where he was the aggressor, while shocking, is plausible as a means of ensuring Person A's silence. What makes the allegation even more credible is that Respondent, after threatening to take Person A's life, openly considered taking his life. Moreover, Respondent's declarations that he was not going to jail evince a consciousness of his guilt on this specification.

Specification 4: Forcibly Keeping Person A in Hotel Room

I find by a preponderance of the credible, relevant evidence that Respondent kept Person A in their hotel room at the Trump Hotel for two to three hours against her will. As set forth above, I find Person A's estimate of the duration of the entire hotel room episode unreliable; nevertheless, her credible testimony establishes that Respondent blocked her egress by physically striking Person A intermittently over an extended period; threw her on the bed; pointed a gun at her head; and blocked the door to the room with his body. I further credit Person A's testimony that she made several attempts to run from the room, only to have her escape attempts forcibly repelled by Respondent.

Specification 5: Failure to Carry Department-issued Shield

I find by a preponderance of the credible, relevant evidence that Respondent failed to carry his Department-issued shield with him when he traveled to Atlantic City. Members of this Department are required to carry their shields whenever they are armed; Sergeant Spinoza's credible testimony established that she recovered Respondent's shield from his Department locker at the 79th Precinct after his arrest in Atlantic City. *Ipso facto*, Respondent's shield could not have been with him when [REDACTED] in Atlantic City in possession of his firearm.

Case No. 2013-10130

Specification 1: Damage to Person A's Computer

I find by a preponderance of the credible, relevant evidence that Respondent damaged Person A's laptop computer by throwing a glass coaster at it, which damaged the screen. Person A's credible testimony was corroborated by two photographs of the damaged computer, which were admitted into evidence (Department Exhibits 8-A, 8-B).

Specification 2: Menacing

I find by a preponderance of the credible, relevant evidence that Respondent raised his fist toward Person A and threatened to kill her while she was locked in his bathroom. I further find that as Person A left Respondent's home, he followed her onto the street and again threatened to kill her. While there was no independent corroboration of Person A's testimony as it pertained to this incident, I find her testimony more credible than Respondent's.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Scantlebury was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has argued that a sanction of 60 days suspension previously served, plus a one-year period of dismissal probation, is sufficient. I disagree.

The misconduct Respondent engaged in while in Atlantic City was egregious and shocks the conscience. Whether or not Person A embarrassed Respondent in a public

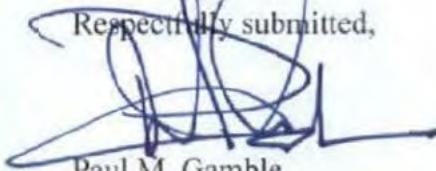
setting, used provocative language toward him or was merely petulant, nothing she did would justify the acts he committed against her person. That he is a New York City Police Officer makes his conduct all the more repugnant. The evidence showed that Respondent violated the trust reposed in him and placed Person A's life in jeopardy when he pointed his firearm at her head. In the view of the Tribunal, the guilty findings arising from the Atlantic City incident standing alone warrant his termination from this Department.

I find that Respondent's testimony before the Tribunal lacked candor. Moreover, his testimony revealed a dismissive attitude toward domestic violence which is unsurprising. This Tribunal notes that in 2010, two years before the incidents which are the subject of this trial, Respondent lost 12 days vacation time for throwing a bowl of oatmeal at his wife and pouring milk over her head.

Aside from his behavior toward Person A, Respondent has displayed extremely poor impulse control and judgment in these two cases. In the Atlantic City case, Respondent was prepared to get into his car, armed, and return to New York after consuming four alcoholic beverages over a five-hour period. In the [REDACTED] incident, Respondent clearly lost his temper and inflamed the circumstances of the end of a difficult relationship with a threat of violence.

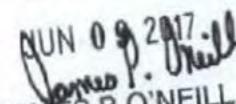
Under these circumstances, I find Respondent's continued employment by this Department inconsistent with good order, discipline and efficiency.

Accordingly, I recommend that Respondent be DISMISSED.


Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

JUN 09 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ANDY SCANTLEBURY
TAX REGISTRY NO. 937500
DISCIPLINARY CASE NOS. 2013-10130 & 2012-8560

On his last three annual performance evaluations, Respondent received an overall rating of 3.0 "Competent." He has not been awarded any medals.

Respondent has been the subject of one prior adjudication. In 2010, he forfeited 12 vacation days for throwing a bowl of oatmeal at his significant other and pouring milk over her head.

Respondent also has a monitoring record. From January 30, 2013, to December 10, 2013, Respondent was placed on Level 2 Disciplinary Monitoring based on his overall record with the Department. On December 10, 2013, Respondent was upgraded to Level 3 Special Monitoring due to poor performance, which remains ongoing.

Paul M. Gamble
Assistant Deputy Commissioner Trials